IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 581 of 2000

Date of Decision : 27.12.2007

State of H. P. …Appellant.

Versus:

Suresh Kumar …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. Ashok Chaudhary, Addl. A. G.

For the respondent : Mr. Malaya Kaushal, Advocate vice Mr. Ramakant Sharma, Advocate.

Sanjay Karol, J. (Oral).

The present appeal arises out of the judgment dated 10.7.2000 passed by the Special Judge, Sirmaur District at Nahan, H.P. in Corruption Case No. 5-CC/7 of 1999, titled as State v. Suresh Kumar, acquitting the accused of the charged offence.

As per the case of the prosecution, the accused was posted as Superintendent in the office of the Executive Engineer, HPPWD (B&R Division) at Paonta Sahib, H. P. and was dealing with official matters. On 4.2.1997, complainant Mohinder Singh

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

approached the accused for getting himself registered as Class-D Contractor when the accused demanded a sum of Rs.500/- for processing his application. Complainant being a poor person, however, agreed to pay the same after making necessary arrangements. The accused made an endorsement for the deposit of the requisite fee and handed over the application back to the complainant for the said purpose. After having deposited the said amount with the SDO, PWD, Paonta Sahib, the complainant again approached the accused on 8.2.1997 and submitted the said application along with the documents when a similar demand was again made by him. As the complainant was not carrying the demanded amount, the accused asked him to bring the same on 18.2.1997, on which date, the complainant again met the accused in his office at 10.00 A.M. and expressed his inability to pay the demanded amount. At that the accused refused to process the application. Shri Mohinder Singh (PW-7) having left with no alternative promised to come back with the amount on the same day.

Having no intention of meeting with the illegal demand, complainant was advised by Shri Ram Lal (PW-8) to contact the Vigilance staff, who by chance happened to be in the Rest House at Paonta Sahib. Accordingly, at the Rest House, Paonta Sahib, the complainant contacted Shri Ram Lal (PW-11) Dy. Superintendent of Police of the Vigilance Department and got his statement recorded under Section 154 Cr.PC (Ext.PB), on the

basis of which FIR (Ext.PB/1) dated 18.2.1997 u/s 13(2) of the Prevention of Corruption Act was accordingly registered. PW-11 associated Devender Singh Kanwar (PW-9), Tehsildar as witness to the proceedings and formed a raiding party. PW-7 handed over five currency notes of one hundred rupees denomination (produced vide memo No. Ext.PD) to PW-11 who after noting down the serial number of the currency notes gave the demonstration as to how the hand wash of phenolphthalein powder becomes pinkish when the sodium carbonate is added in it and after treating the currency notes in question with phenolphthalein powder gave them to PW-7 with the direction to hand over the same to the accused only on demand. PW-8 was asked to act as a shadow witness and hear the talk between the accused and PW-7 and give signal to the raiding party.

The raiding party proceeded to the office of the accused in the Mini Secretariat, Paonta Sahib and at 11.00 A.M. on 18.2.1997, on demand, PW-7 handed over the treated currency notes to the accused in his office. PW-8 having seen PW-7 give the currency notes to the accused, signaled to PW-9 & PW-11 who apprehended the accused. The hands of the accused were secured and were dipped in the solution of Sodium Carbonate which became pinkish. The sealed bottle of the hand washed sample was sent to the Chemical Examiner, which was reported to be the solution of phenolphthalein powder and sodium carbonate vide FSL report Ext.PH. The sanction for prosecuting the accused was obtained vide Ext.PA.

With the completion of the investigation, the challan was presented in the Court for trial and the accused was charged for an offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988 punishable u/s 13(2) of the said Act. The accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined 11 witnesses and the statement of the accused under Section 313 Cr.PC was also recorded. In support of his defence, the accused examined one witness.

After appreciating the material on record, including the deposition of the witnesses, the Court below came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt as the witnesses had failed to show that the accused had made any demand of illegal gratification. The Court found the statements of the witnesses to be contradictory and accordingly acquitted the accused of the charged offence.

I have heard the learned counsel for the parties and examined the record.

Shri R. R. Verma (PW-1), Shri R. K. Sharma (PW-2), Constable Jagat Singh (PW-3), Shri Khem Chand (PW-4), Shri N. K. Bhardwaj (PW-5), Shri Saran Singh (PW-6) and C. Vivek Anand (PW-10) are official witnesses who have proved the fact that at the relevant time the accused was officiating as Superintendent in the office of the Executive Engineer, HPPWD and valid sanction to prosecute was granted. The police officials have proved the

sending of the sample for chemical analysis and also the obtaining of the report.

This leaves with the statements of complainant Mohinder Singh (PW-7), Shri Ram Lal (PW-8), Devender Singh (PW-9) and Dy.S.P. Ram Lal (PW-11) who carried out the investigation.

As per the version of the prosecution, the illegal gratification was demanded by the accused on four occasions and three different dates; 4.2.1997, 8.2.1997 and twice on 18.2.1997 i.e. 10.00 A.M. and 11.00 A.M. On the suggestion of PW-8, PW-7 contacted PW-11 in the Rest House at Paonta Sahib who constituted a raiding party along with PW-9 and after carrying out the necessary formalities and giving complete instructions laid the trap and on 18.2.1997, by 11.00 A.M. the accused was apprehended by the raiding party in his office when the money was handed over to the accused as illegal gratification.

Having gone through the statements of these witnesses, I am of the considered view, that there are major and vital contradictions in the statements of these witnesses rendering the version of the prosecution to be false.

The police party searched the accused (search memo Ext.PF) but did not find the treated currency notes. As per the version of PW-7, the accused took out the currency notes out of the drawer of his table and then handed them over to the raiding party which were taken into possession by them (recovery memo

Ext. PE), whereas as per the version of PW-8 the treated currency notes were taken out by the accused from his pocket and handed over to PW-11.

As per the version of PW-7, the incident of alleged demand was narrated by him to PW-8 who advised him to approach the Vigilance staff, who by chance happened to be at the Rest House, Paonta Sahib and accordingly PW-7 contacted PW-11 who recorded his statement Ext.PB. This version stands fully contradicted by the version of PW-11 according to whom, on 18.2.1997 PW-7 had contacted him on telephone at Nahan at about 11/11.30 A.M. and he had asked him to meet him at the PWD Rest House at Paonta Sahib between 1.00 and 2.00 P.M. He reached the Rest House only at about 1.30 P.M. and it was only thereafter that PW-7 contacted him when his statement was recorded and the raiding party constituted.

Further, as per the version of PW-7, the accused had made demand of illegal gratification on 18.2.1997 twice i.e. at 10.00 A.M. and 11.00 A.M. and at the time of second demand he handed over the treated currency notes to the accused in his office when the accused was apprehended. Now, if PW-7 had met PW-11 only at 1.30 PM then how could the accused make demand of the illegal gratification and PW-7 hand over the treated currency notes to the accused in the morning at 11.00 A.M.

Similarly, there is a contradiction with regard to the demonstration given by PW-11 before the raid was carried out. Whereas PW-8 has stated that at the time of demonstration PW-

11 had dipped his hands in the container which made the water sodium carbonate turn pinkish in colour, on the other hand, as per the version of PW-9 only phenolphthalein powder was put in the solution which made the solution turn pinkish in colour.

Further, as per PW-11 he had instructed both PW-7 and PW-8 to pay the illegal gratification to the accused only on demand. From the statement of PW-8, it can not be said that the illegal gratification was paid by PW-7 on demand made by the accused.

As per the version of PW-11, statement of PW-7 under Section 154 Cr.PC was recorded in the Rest House at Paonta Sahib after 1.30 P.M. and only thereafter the raiding party was constituted by requesting PW-9 to associate himself with the raiding party. According to this witness, the raid took place at about 2.30/2.45 P.M. The time gap between the lodging of the complaint and carrying out the exact raid was too short for them to have completed all the formalities. It has come on record through the versions of PW-7, PW-8, PW-9 & PW-11 that within this time PW-9 was traced and requested to associate himself with the raiding party and the entire process of lodging the complaint; taking and counting the currency notes; treating them with phenolphthalein powder; giving demonstration; as to how the hand wash of phenolphthalein powder becomes pinkish when the sodium carbonate is added in it; giving instructions to the witnesses; reaching the office of the accused; laying the trap and actually apprehending the accused was done within this time.

Paonta Sahib is more than 40 kms. from Nahan. Keeping in view the time factor, it is highly improbable that everything could have been done by the raiding party within this time.

Further, as per the version of PW-7 the Ist demand was made by the accused on 4.2.1997, on which date, the accused made endorsement on application Ext.P-4. The demand for illegal gratification was made on the same day on which the application was presented and endorsement made. This version stands falsified from the perusal of the application Ext.P4 itself, on which, the date of endorsement written is 5.2.1997 and not 4.2.1997. Therefore, obviously on 4.2.1997 no demand could have been made by the accused as PW-7 had met the accused for the first time on the date when the endorsement on the application was made i. e. 5.2.1997.

With regard to the demand of illegal gratification made on 8.2.1997 suffice it to show that it was second Saturday and a Govt. holiday. It is not the case of the prosecution that the office in question was open or that the accused had specifically asked the complainant to come to the office on a holiday. It has been categorically stated by PW-7 that the demand for the second time was made by the accused in the office on 8.2.1997. In this view of the matter, the version of PW-7 cannot be relied upon to prove the guilt of the accused.

The office of the accused is in the Mini Secretariat. Through the version of PW-7, it has come on record that the Secretariat comprises of multi storeyed building. There are other

offices. It is surprising that inspite of the demand made on two different occasions, PW-7 did not make any complaint to the superior officers whose offices are also in the same complex.

Site plan Ext.P2 depicts only three chairs (including two chairs for guests) in the room of the accused where the demand by illegal gratification is alleged to have been made. The version of PW-7, stands falsified according to whom the room in question was also used by other employees as their office. The prosecution has failed to prove its case beyond reasonable doubt. The accused cannot be said to have committed the charged offence.

The accused has had the benefit of having been acquitted by the Court below. While arriving at its conclusion, the Court below has considered the entire material on record. I see no perversity in the same. In the facts and circumstances, the present appeal is dismissed. Bail bonds stand discharged.

December 27, 2007. **(Sanjay Karol),**
(*rana*) **Judge.**